

EMERGING SMALL BUSINESS ENTERPRISE PROGRAM STANDARD OPERATING PROCEDURES MANUAL (SOP)

SECTION I - INTRODUCTION

From one end of the nation to the other, small businesses and emerging small business enterprises are facing economic challenges as inflation and recessions restrict business opportunities in the private sector. Now more than ever, the public sector is considered a significant source of opportunities for these businesses.

Populated by a diverse citizenry and guided by a commitment to inclusion and equal access, the County of San Bernardino is taking the leadership in responding to the need in this vital sector of the economy by assuring that Emerging Small Business Enterprises (ESBEs) have equal access to contract opportunities (construction and non-construction), which includes procurement of goods and services.

A. **Background**

The County has historically played a leadership role in pursuing aggressive outreach efforts to recruit and promote local small businesses. These efforts are reflected in our contracting programs.

The County's Emerging Small Business Enterprise Program aspires to achieve four basic goals: assuring fair treatment for all parties involved in County contracting; increasing economic opportunities for Emerging Small Business Enterprises (ESBEs); fostering the formation and development of local businesses; and improving the efficiency of the County's contracting process.

Through its Emerging Small Business Enterprise Program (ESBE), the County has declared a commitment to focus on problems at both ends of the spectrum and at all points in between for all small businesses in the County's market area, regardless of the race and gender of their owners. This broad focus enables the County not only to nurture the American ethic of equality of opportunity for historically disadvantaged businesses, but to do so in a manner which achieves desired results without compromising the quality of work performed.

B. **Authority**

County Policy No. 15-01 provides for establishment of the County's Standard Operating Procedures.

Purpose of Manual

The primary purpose of the manual is to provide for the implementation of Board Policy No. 15-01. The manual will also serve to help department staff recognize their role in and responsibility to the ESBE Program and contract compliance process.

SECTION II – DEFINITIONS

For the purpose of this SOP, the following terms shall have the definitions as indicated:

A. Awarding Authority or Department

Means the County Board of Supervisors or any department or Board of Supervisor governed special district recommending to the Purchasing Agent or the County Board of Supervisors that a contract be awarded.

B. Consultant

Means person(s), sole proprietorships, partnerships, associations, joint ventures, corporations, institutions or other entities who provide expert, professional assistance to the County under a contract.

C. Contract

Means an agreement between two parties consisting of an offer and an acceptance resulting from solicitation of bids or proposals, in which each party commits to stipulated prices, terms and conditions, or materials or services.

D. Contractor

Means any person, sole proprietorship, partnership, association, corporation, joint venture, institution or other entity which is a party to a contract.

E. Emerging Small Business Enterprise

Emerging Small Business Enterprise shall mean a business whose average gross annual receipts in three fiscal years immediately proceeding its application for registration does not exceed the following by industry or category:

<u>Industry Type</u>	<u>Annual Gross Receipts</u>
General Construction Contractor	8 million
Specialty Construction Contractor	3 million
Professional A/E	2 million
Professional Other	2 million
Retail Trade	2 million
Services	2 million
All Other Businesses	2 million

Minority Business Enterprise (MBE)

Means a business concern, consultant or contractor that meets all of the following criteria:

1. is a business at least fifty-one (51) percent owned by one or more minorities or, in the case of any business whose stock is publicly held, at least fifty-one (51) percent of the stock is owned by one (1) or more minorities;
2. is a business whose management and daily operations are controlled by one (1) or more minorities who own the business; and
3. is a business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

G. Women Business Enterprise (WBE)

Means a business concern, consultant or contractor that meets all of the following criteria:

1. is a business at least fifty-one (51) percent owned by one (1) or more women or, in the case of any business whose stock is publicly held, at least fifty-one (51) percent of the stock is owned by one (1) or more women;
2. is a business whose management and daily operations are controlled by one (1) or more women who own the business; and
3. is a business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

H. Minority

Means a citizen or lawful permanent resident of the United States who is an ethnic person of color who is: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, or Central or South American or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut or Native Hawaiian); Pacific Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories or the Pacific including the Northern Marianas); Asian-Indian (a person whose origins are from India, Pakistan or Bangladesh); or any other group of natural persons identified as minorities in the County's respective project specifications.

Disabled Veteran

Means a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.

J. Disabled Veteran Business Enterprise (DVBE)

Means a business concern certified by the State Office of Small and Minority Business as meeting all of the following requirements:

1. is a sole proprietorship at least fifty-one (51) percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least fifty-one (51) percent of its stock is owned by one (1) or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least fifty-one (51) percent of the voting stock of the parent corporation is owned by one (1) or more disabled veterans; or a joint venture in which at least fifty-one (51) percent of the joint venture's management and control and earnings are held by one (1) or more disabled veterans;
2. the management and control of the daily business operations are by one (1) or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern; and
3. is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

K. Other Business Enterprise (OBE)

Means a business concern, consultant or contractor which does not otherwise qualify as a Minority, Women, Disabled Veteran or Emerging Business Enterprise.

L. Procurement

Includes the acquisition of material, supplies, goods equipment, systems, construction and services through both formal (including competitive bids) and informal transactions which result in purchase orders and/or contracts.

M. Public Works Contract

Is an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road or other public improvement of any kind.

Purchase

Means a method of procurement which results in an order for materials, supplies, goods, equipment, systems or services.

O. Purchase Order

Is defined as a form of contract which is used to order supplies, equipment, goods, systems or services. These are either unilateral, or one signature in nature, subject to performance by a vendor to form a contractual obligation.

P. Purchasing Agent

Means the Director of Purchasing.

Q. Responsible and Responsive Bidder/Proposer

Means, in addition to any other applicable requirement of law or County policy, that the bidder/proposer has made a valid representation to the County supported by evidence that the bidder/proposer has complied with and satisfied County Policy No. 15-01.

R. Bidder/Proposer

Means any person or entity making an offer or proposal to provide goods and/or services to the County.

S. Negotiation

Means to carry on business or to confer with another so as to arrive at the settlement of some matter.

T. Subcontractor

Means an individual or business firm contracting to perform part or all of another's contract.

SECTION III – ESBE PROGRAM

A. Policy

It is the policy of the County of San Bernardino Board of Supervisors that owners of Emerging Small Business Enterprise (ESBEs) shall have the maximum opportunity to participate in the County's procurement programs.

B. Objectives

1. Ensure that County departments provide ESBES equal access to County contracts and sub-contracts.
2. Aggressively pursue outreach efforts to locate Emerging Small Business Enterprise (ESBEs) and provide them with the necessary assistance to compete in the County's contracting programs.
3. Identify any barriers that negatively impact the ability of ESBE vendors to compete for County contracts and explore ways to mitigate these barriers.
4. Report to the Board of Supervisors on the participation of ESBES in contracting programs.

C. Applicability

This program shall apply to all procurement and contracting activities related to the purchasing of goods, services, supplies, equipment and services for construction and non-construction contracts.

This program shall not supersede applicable federal and state requirements for those contracts which are financed in whole or in part by federal or state funds.

D. Program Administration

1. Small Business Enterprise Manager

This position has program responsibility and is supervised by the County Administrative Officer. The Small Business Enterprise Manager is indirectly responsible for:

- a. directing and managing the ESBE Program for compliance by County departments in conformance with state, federal and county legal requirements as Director of the Office of Small Business Development;
- b. reporting a department's noncompliance to the County Administrative Officer;
- c. ensuring that the annual report to the County Administrative Officer is completed;
- d. ensuring department heads are complying with Program objectives;
- e. providing data required by the County Administrative Officer to make recommendations to the County Board of Supervisors;

- f. reporting to the County Administrative Officer as to strengths and weaknesses of the previous year's program activities;
- g. providing the Department Heads with the necessary documentation and recommendations for goal adjustments based on availability of ESBEs;
- h. provide functional supervision of Department ESBE Program Coordinators;
- i. take immediate and appropriate action upon learning of ESBE contractor, vendor, bidder and proposer protests, disputes and complaints;
- j. conduct, schedule and coordinate Department ESBE Program Coordinator quarterly meetings;
- k. develop and maintain monthly, quarterly, year-to-date and annual Program reports;
- l. provide the data, documentation, analysis and recommendations regarding the actual accomplishments and effectiveness of the ESBE Program to the County Administrative Officer;
- m. conduct outreach conferences, seminars and workshops;
- n. provide direct communication and coordination with departments for the prompt processing of contracts, agreements and purchase orders;
- o. review and audit individual departments on a quarterly basis to verify compliance with policy;
- p. ensure that all ESBEs obtain a County registration number prior to bid submittals with the County and participation in its ESBE Program; and
- q. ensure that all ESBEs participating in the County's ESBE Program are certified in conformance with County Policy.

2. Department ESBE Program Coordinator

Each department head shall assign a person to be the Department ESBE Program Coordinator. Each department head has primary responsibility for goals and the designated Department ESBE Program Coordinator will have responsibility for:

- a. receiving functional supervision from the Small Business Enterprise Manager;

- b. serving as a liaison between the Office of Small Business Development and the department, providing assistance to department staff and/or contractors regarding the availability of ESBE resources and the ESBE Program in general;
- c. attending Department ESBE Program Coordinator meetings;
- d. assisting the Small Business Enterprise Manager, County Counsel or other County agency in obtaining information regarding RFPs, contracts, ESBE Program data, etc., that may be needed to resolve a dispute or clarify actions taken by the department or contractor; and
- e. assisting in the periodic ESBE Program monitoring review conducting by the Small Business Enterprise Manager.

E. Program Implementation

- 1. The Small Business Enterprise Manager, in conjunction with Department Heads, shall be responsible for implementing program policy elements for the ESBE Program, to include:
 - a) Small Business Enterprise Manager and each County Department Head, based upon direction and guidelines provided by the Board of Supervisors, will develop individual department goals based upon availability and past participation. Sources used to determine availability will be the Office of Small Business Development's directory of registered vendors.
 - b) Promoting the expanded use of ESBE firms in departmental procurements.
 - c) Help sponsor and participate in procurement workshops, conferences, seminars and other outreach efforts to ESBE firms.
 - d) Monitoring of the County's ESBE Program to establish its effectiveness in eliminating barriers that negatively impact the ability of ESBE vendors to compete for contracts.
 - e) At least quarterly provide the Office of Small Business Development a list of all procurement opportunities to be included in its quarterly newsletter.

F. PROCEDURES TO ENSURE THAT ESBEs HAVE AN EQUAL OPPORTUNITY TO COMPETE FOR CONTRACTS AND SUBCONTRACTS

The Purchasing Agent and Department Heads shall be responsible for implementing the following procedures:

1. **ESBE Directory** – Small Business Enterprise Manager shall maintain a directory of registered Emerging Small Business Enterprises (ESBEs) and shall make the directory available to departments and prime contractors to facilitate the identification of County registered ESBEs whose skills are needed in the performance of County contracts (construction and non-construction), procurement of goods and services, equipment, purchase orders, services (professional and otherwise) and supplies.
2. **Low Value Purchases** – Whenever requests for price quotations are solicited it shall be from at least three (3) companies or firms (unless it is a sole source or other unique situation). To the extent possible, one (1) shall be a registered ESBE which has the technical competence or production capacity or is otherwise able to provide the items at reasonable, competitive prices in a timely manner.
3. **Open Account Purchases** – ESBE directory shall be used to establish open or blanket accounts with ESBE firms that have the technical competence or production capacity or are otherwise able to provide the items at reasonable, competitive prices in a timely manner.
4. **Purchase Request/Order** – ESBE directory shall be used to request or order procurement of goods and services, supplies and equipment with ESBE firms that have the technical competence or production capacity or are otherwise able to provide the items at reasonable, competitive prices in a timely manner.
5. **Outreach Activities** – Office of Small Business Development, Purchasing Agent and Department Heads shall hold procurement conferences, workshops or seminars periodically to acquaint the ESBE business community with the requirements and scope of its procurement activities.
6. **ESBE Utilization** – Department Heads, shall be responsible for encouraging the utilization of the ESBE directory for the following procurement solicitations: Competitive Negotiation Request for Proposal (RFP); Informed Bid Invitation; Informal Bid Request for Quotation (RFQ); Non-Exclusive Negotiated Agreements; Sole Source Requests and Emergencies.
7. **County Facilitation of Use of ESBEs** - County departments involved in procurement shall take affirmative steps to maximize ESBE participation. Affirmative steps shall include the following:
 - (a) Include ESBEs on lists of prospective bidders and consultants and assure that ESBEs are solicited.
 - (b) Public Works projects of \$300,000 or greater in which subcontractors will be used, Prime contractors shall be requested to contact the Office of Small Business Development and request a list of County registered subcontractors for participation in specific trades, supplies, goods, services

or allocate of subwork needed for the specific project. This does not apply to public works projects less than \$300,000.

- (c) For those contracts requiring County approval of subcontracts, if any subcontracts are to be awarded, to the extent practicable, the prime bidder should be requested to divide the project or purchase into smaller tasks or quantities to permit maximum ESBE participation and establish delivery and payment schedules which will facilitate ESBE participation.

SECTION IV – OUTREACH

County's Office of Small Business Development shall take the leadership roll in developing outreach methods and techniques to assure increased participation of ESBEs in the County's procurement activities of needed goods and services, including professional services contracts. The Office will, to the extent possible, provide technical assistance and referral of ESBEs for management and business development services, such as: financing, bonds, insurance, bid estimating, planning joint venturing, etc.

Outreach activities to the business community include, but are not limited to:

- A. Workshops, seminars, business trade shows, conferences, etc.
- B. Networking with business organizations such as: Chambers of Commerce, Business Associations, Purchasing Councils and Small Business Administration.
- C. Develop and implement a newsletter for communication to the business community.
- D. Press releases to newspapers.
- E. Radio and television interview programs.
- F. Speaking engagements to civic, business and professional organizations.
- G. Encouraging and training County departmental staff to participate in activities that foster a greater awareness of contracting opportunities in their respective departments;
- H. Encouraging participation of ESBEs in pre-bid meetings for networking with prime contractors and County staff.

SECTION V – REGULATIONS

A. False Claims or Representations

Bidders/proposers making misrepresentations, false claims, intentionally making an untrue statement or violating any policy or regulation of the County ESBE Program criteria, shall not be allowed to bid or make proposal on any future County contracts for a period of two (2) years and shall be taken off the County's bidders' list.

B. Employment of Private Consultants/Firms

County departments involved in procurement of private consultants/firms shall comply with County Board of Supervisors Policy No. 11-11 (and the accompanying 11-11SP) and associated procedure manuals. Affirmative steps shall be taken to assure ESBE participation is consistent with Policies 11-11, 15-01 and this Procedures Manual.

C. Purchasing Agent

When the Purchasing Agent solicits requests for proposals or price quotations from at least three (3) companies or firms, to the extent possible, one (1) shall be a registered ESBE which has the technical competence or production capacity or is otherwise able to provide the items at reasonable, competitive prices in a timely manner.

D. Federal and State Requirements

To the extent of any conflict between this policy and any requirements imposed by the federal or state government relating to participation in a contract by an ESBE, MBE, WBE, DVBE or OBE as a condition of receipt of federal or state funds, the federal or state requirements shall prevail.

E. Appeals

All ESBE contractor, vendor, bidder, proposer protests, disputes and complaints regarding Policy 15-01 or the implementation thereof, will be reviewed by the Department ESBE Program Coordinator. Once a determination is made by that individual, an appeal may be taken to the Small Business Enterprise Manager. If the Small Business Enterprise Manager concurs, an appeal may be taken to the County Board of Supervisors or its designee. All stages of the appeal will be handled in a timely manner. It is anticipated that the entire appeals process will be completed within 30 days.

F. Complaints

Any complaint of discrimination received by the County concerning the ESBE Program shall be investigated by the Small Business Enterprise Manager.

G. ESBE Directory Utilization

Office of Small Business Development will maintain a directory of County registered ESBE vendors. All County departments shall utilize this directory for soliciting vendor firms needed in the performance of County contracts.

H. Suspensions

No County Department with the power to award contracts shall enter into any contract with any person or business suspended by the County during the period of the individual's or business' suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or business as a sub-contractor suspended by the County during the period of the person's or business' suspension. The Office of Small Business Development will maintain a list of suspended individuals or businesses.

I. ESBE Program Graduation

When a certified and registered ESBE Program participant has exceeded the average gross annual receipts for three consecutive years for its industry type as per Section II.E of this manual, the ESBE participant shall be termed "graduated" from the ESBE Program and certification and registration shall be terminated. If a graduated business encounters a change in its financial status thereby making it eligible once again for ESBE status, the business may re-apply for ESBE certification.

J. Finding(s) of Fact

Situations may arise where it is not practicable to apply the ESBE Program. If such a situation arises, the Department ESBE Program Coordinator may make a finding based upon the existing facts, that it is not practicable to apply the ESBE Program. The Small Business Enterprise Manager must review the finding of fact. The finding must be presented in the form of a recommendation to the County Board of Supervisors that because of the unique or special circumstances of the specified situation the ESBE Program will not be applicable. Some situations may be, but are not limited to, sole source products/services, emergency requisitions, or situations where church related organizations, non-profit organizations or other public entities are proposing to provide services.

SECTION VI – PERFORMANCE REPORTING

Office of Small Business Development, Purchasing Department, Architecture and Engineering Department, Transportation/Flood Control Department, Information Services Department and Auditor Controller Department shall be responsible for developing and implementing reporting requirements and a tracking system for the ESBE Program.

SECTION VII – MONITORING

The Small Business Enterprise Manager or his/her designee shall periodically monitor each department's activities. Periodic monitoring reviews shall be conducted and monitoring reports written as to findings and recommendations as it related to Compliance with County policies.

Written monitoring reports shall be periodically given to the County Administrative Officer for presentation to the County Board of Supervisors showing results and recommendations.

SECTION VIII – CERTIFICATIONS

A. ESBE

The County's Office of Small Business Development shall develop and implement a certification process meeting the standards of Emerging Small Business Enterprise as set forth in Section II.E. of this manual.

B. MBE

Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by their particular community.

The County's Office of Small Business Development shall develop and implement a certification process to meet the standards set forth in Section II.F of this manual.

C. WBE

Bona fide women's group membership shall be established on the basis of the individual's claim that she is a member of a women's group and is so regarded by their particular community.

The County's Office of Small Business Development shall develop and implement a certification process to meet the standards set forth in Section II.G of this manual.

D. DVBE

Certification done by the Office of Small & Minority Business of the State of California.

E. CFR 49.23 Certifications

The County's Office of Small Business Development shall develop and implement a comprehensive certification process meeting the standards of the code of Federal Regulations 49.23 for those departments that must maintain a state or federal certification requirement.

SECTION IX – COUNTY REGISTRATION

All certified ESBEs must submit a copy of their approved ESBE certification letter and complete the County's registration application to receive an assigned County Registration Number.

All ESBEs participating in any County contract, agreement or purchase order must have an assigned County Registration Number prior to the submittal of any bids/proposals.